

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

DISTRICT HOSPITAL PARTNERS, L.P. D/B/A)	
GEORGE WASHINGTON UNIVERSITY)	
HOSPITAL, A LIMITED PARTNERSHIP, AND)	
UHS OF D.C., INC., GENERAL PARTNER,)	
)	
and)	CASE NOS. 05-CA-216482
)	05-CA-230128
1199 SERVICE EMPLOYEES INTERNATIONAL)	05-CA-238809
UNION, UNITED HEALTHCARE WORKERS)	
EAST, MD/DC REGION A/W SERVICE)	
EMPLOYEES INTERNATIONAL UNION.)	

**RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S DECISION ISSUED SEPTEMBER 4, 2019**

District Hospital Partners, L.P. d/b/a The George Washington University Hospital, A Limited Partnership (“the Hospital” or “GWUH”), and UHS of D.C., Inc., General Partner (“UHS”) (collectively, “Respondents”), by and through their undersigned attorneys and pursuant to Section 102.46 of the Board’s Rules and Regulations, hereby files their Exceptions to the Decision of Administrative Law Judge Michael A. Rosas, which was issued on September 4, 2019.¹ The specific grounds and authorities in support of the Exceptions are set forth in more detail in the concurrently filed Brief.

1. Respondents takes exception to the ALJ’s statement that the Hospital conceded that it’s **No Strikes or Lockouts** proposal was unlawful. No such admission was made. (JD at 36:4-7.)

2. Respondents take exception to the ALJ’s “finding of fact” regarding lawfulness of the Hospital’s **Grievance and Mediation** and **Discipline** proposal, alone or in combination, as

¹ The September 4, 2019 ALJ Decision will be referred to as “JD at [page number]:[line number].”

the ALJ misstates the course of bargaining, misreads the proposal and fails to address the Union's failure to meaningfully counter the proposal. (JD at 15:17-23.)

3. Respondents take exception to the ALJ's findings that the Hospital failed to negotiate its **Rights and Duties of Managers, Supervisors and Licensed Clinical Staff ("Management Rights")** proposal for "nearly two years," and that combined with its **Wage** proposal, gave itself unfettered discretion, as the ALJ misstates the course of bargaining, misreads the proposals, fails to address the Union's failure to meaningfully counter the proposals, and misapplies the cited case law. (JD at 36:12-17.)

4. Respondents take exception to the ALJ "legal analysis" that the Hospital "delayed" in producing a **Wage** proposal, that once produced, its proposal was "unprecedented," "spurred further rancor," and was "doomed on arrival," that the Hospital refused to negotiate the proposal, and that it gave the Hospital "unfettered discretion," as the ALJ misstates the course of bargaining, misreads the proposal and fails to address the Union's failure to meaningfully counter it. (JD at 41:2-8; *see also* 22:36-23:2; 28:20-21; 51:31-34.)

5. Respondents take exception to the ALJ's findings that the Hospital's combination of proposals (specifically, **No Strikes or Lockouts, Grievance and Mediation, Management Rights, and Wages**) constituted bad-faith surface bargaining in violation of Section 8(a)(5) and (1), as the proposals were not unlawful, either individually or in combination, and the ALJ misstates the course of bargaining (and specifically, improperly finds "adherence"), fails to address the Union's failure to meaningfully test the Hospital's willingness to bargain about the proposals, and misapplies the cited case law. (JD at 36:43-37:9; 37:11-18; 41:17-25; 43:36-44:10.)

6. Respondents take exception to the ALJ's failure to substantively address the Union's refusal to test the Hospital's willingness to bargain about the allegedly objectionable proposals. (JD at *passim*; see also JD at 35:42-45; 36:24-28.)

7. Respondents take exception to the ALJ's finding that its **Union Security** proposal was unlawful, as an employer is entitled to propose the elimination of **Union Security**, the Hospital (via Steve Bernstein, not Jeanne Schmid) provided multiple grounds in support of its proposal, and the ALJ improperly placed the burden on the Hospital to "substantiate" its stated business justifications. (JD at 37:20-28.)

8. Respondents take exception to the ALJ's finding that the Hospital's **Discipline** proposal was unlawful, alone or in combination, and/or because it sought to eliminate the "just cause" standard. (JD at 36:7-10.)

9. Respondents take exception to the ALJ's finding that the Hospital engaged in "regressive" bargaining when it corrected a reference to "arbitration" in its **Discipline** proposal, as correction of a mistake, especially prior to a Tentative Agreement, is not regressive. (JD at 11, fn. 19; 16:41-42; 37:30-39.)

10. Respondents take exception to the ALJ's finding that its "Bargaining Briefs" led to employee disaffection as they were lawful and non-coercive, and there was no record evidence to support the conclusion. (JD at 15:36-40; 38:10-21; 39:27-30; 39:30-35; 41:5-8.)

11. Respondents take exception to the ALJ's decision insofar as he improperly applied *Lee Lumber*, as this is not a refusal to bargain case. (JD at 39:30-35.)

12. Respondents take exception to the ALJ's decision insofar as he misapplied the *Master Slack* factors in finding that unremedied unfair labor practices caused disaffection, as there were no unremedied ULPs, and even if there were, they were too remote in time, they were

not of a nature to lead to employee disaffection, and they did not cause employee disaffection. (JD at 40:1-2, 40:13; 40:25-32 and fn. 97; 41:13-14.)

13. Respondents take exception to the ALJ's decision insofar as he found the withdrawal of recognition to be unlawful, and *ipso facto*, post-withdrawal unilateral changes to be unlawful as well, as the Hospital had received objective evidence of the Union's loss of majority support (at a larger margin than that recognized by the Act) and unremedied ULPs, if any, were not of the variety to cause employee disaffection. (JD at 30:30-31; 41:36-39; 44:12-16; 44:32-35.)

14. Respondents take exception to the ALJ's credibility determinations as they relate to Jeanne Schmid and every employee witness that testified (William Barnes, Mary Collins, Angelica Claros, Noel Reyes, Vivian Otchere, Lewis Bellamy, Hardie Cooper, Eugene Smith, Tsedale Benti, and Freddie Ard, III), as they grossly misstate and inaccurately portray the sworn testimony and record evidence, as well as the ALJ's reliance on and characterization of bargaining notes which demonstrate bias. (JD at 10:5-8; 30 at fn. 72; 30 at fn. 73; 30 at fn. 74; 30 at fn. 75; 30 at fn. 76; 30 at fn. 77; 30 at fn. 78; 30 at fn. 79; 30 at fn. 80; 30:13-31:4; 31 at fn. 81; 31 at 6 and fn. 82; 40:39-41:1 *see also* 13:5-8; 14:25-26; 15:31-34; 17:28; 18:7-8; 19:34-35.)

15. Respondents take exception to the ALJ's finding that the General Counsel should have been permitted to amend the Amended Complaint to add an allegation of a *Johnny's Poultry* violation. (JD at 42:15-38.)

16. Respondents take exception to the ALJ's issuance of an affirmative bargaining order, including the provisions that require bargaining for a minimum of 15 hours per week, submission of written bargaining progress reports every 15 days to the Region's Compliance Officer (along with copies to the Union), and payment to employee union committee members

for earnings or leave lost while attending bargaining sessions, as neither the facts nor the law support such an extraordinary remedy, the remedy is solely punitive in nature, and the remedy is not tailored to achieve compliance with the Act. (JD at 41:16-17; 44:37-45:4; 45:6-10.)

17. Respondents take exception to the ALJ's incorrect recitation of the Hospital's alleged availability for negotiations, as he misstates the record and ignores the Union's restricted availability. (JD at 13:10-13; 18:33-35.)

18. Respondents take exception to the ALJ's finding that at all relevant times the Respondents recognized the Union as the exclusive bargaining representative of the employees and that the Union was the exclusive bargaining representative of the employees. (JD at 3:9-12; 44:12-15.)

19. Respondents take exception to the ALJ's Conclusions of Law (JD at 43:19-44:19), Remedy (JD at 44:20-45:16), Order (JD 45:19-47:17), and Appendix (JD at unnumbered pages following 47) in their entirety because they are not supported by the facts or law, as more fully outlined in the preceding exceptions.

Submitted this 16th day of October, 2019:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed electronically with the National Labor Relations Board at www.nlr.gov, and duly served electronically upon the following named individuals on this 16th day of October, 2019:

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